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TAGS: [KDEM](#) [PGOV](#) [PREL](#) [PTER](#) [LE](#)

SUBJECT: LEBANON: UN LEGAL ADVISOR URGES EARLY TRIBUNAL  
ENACTMENT

REF: EMBASSY BEIRUT APRIL 20 SITREP (NOTAL)

Classified By: Jeffrey D. Feltman, Ambassador. Reason: 1.4 (d)

SUMMARY

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¶1. (C) Near the conclusion of his Beirut visit, the UN Legal Advisor reported to us on 4/20 that Hizballah has still not revealed its reservations to the special tribunal for Lebanon but denies having issues with Article 3 (assigning responsibility to superiors) and has repeated its pledge to support the tribunal if a political compromise is achieved. Michel urged his interlocutors, including the reluctant Russian Ambassador, to undertake rapid action to establish the tribunal to accommodate extensive lead time to get it running. While Michel was careful to avoid advocating the establishment of the tribunal under Chapter VII, UN Special Coordinator Pedersen had reassured Hizballah leaders before Michel's visit that Chapter VII action did not spell military intervention. Both Pedersen and Defense Minister Murr saw risks in Chapter VII action to stability in Lebanon and to UNIFIL in particular. March 14 backers of the tribunal have acted ineptly and have failed up to now at their most important task -- convincing third countries, especially Security Council members, that Chapter VII is necessary and that all available Lebanese options have been exhausted. Michel promised a "factual" report to Secretary-General Ban free of any recommendations on the way forward, but seemed eager to see March 14 become proactive now. In a later development, PM Siniora's advisor Mohamad Chatah told us that Michel's subsequent meeting with Siniora contained a worrying element: Parliament Speaker Berri, who saw Michel after the Ambassador's meeting, had proposed Lebanese consultations on the tribunal, an initiative that Chatah was convinced was intended by Berri to delay or stop the tribunal but which he feared Michel might find attractive. End Summary.

STRONG MESSAGE FOR UNIIIC AND THE PUBLIC

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¶2. (SBU) The Ambassador called on Nicolas Michel, United Nations Undersecretary for Legal Affairs and Legal Advisor, at his hotel for an outbrief on Michel's five-day visit to Beirut. Michel was accompanied by Geir Pedersen, UN Special Coordinator for Lebanon, and three other UN staff. Polchief was notetaker. Michel had met with a series of pro-government and opposition leaders, including Hizballah, and had attended a lively dinner for P-5 Ambassadors focusing

on the Special Tribunal of an International Character to investigate and prosecute the assassination of Rafiq Hariri and other recent political violence in Lebanon. (See ref memo for a readout of the dinner.)

13. (C) Michel had just visited the UN International Independent Investigation Commission (UNIIIC) headed by Belgian prosecutor Serge Brammertz, and delivered a strong message of encouragement to the Commission's staff. It is important, he noted, for the morale of the investigating team that they believe that the tribunal will be formed and that their work will bear fruit in the form of a successful prosecution one day. Witnesses have told UNIIIC that they will not give formal testimony without the tribunal and the protections it should offer. Nevertheless Michel felt compelled to ask Brammertz whether the prosecutor would have a strong case to try, and if so, when.

14. (C) Michel's message to the UNIIIC staff echoed his earlier announcement upon arrival in Beirut of certainty that the tribunal will be established. "Many were surprised and pleased that I put it in such clear terms," Michel said. He noted that, at least according to press reports, Russian Deputy Foreign Minister Sultanov, visiting Beirut at the same time, had carried this message to SARG President Asad when he proceeded to Damascus after his Beirut stop. The UN staff noted that the Lebanese opposition press was reporting that Sultanov told Asad that should the tribunal come before the Security Council for a Chapter VII vote, Moscow would not veto it. The Ambassador lamented that Sultanov had evidently not conveyed this message to Russia's Beirut Ambassador Boukin, who had insisted at the previous evening's P-5 dinner that Lebanese leaders would have to "choose between the

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tribunal and Lebanon."

15. (C) What about the Russian thesis, the Ambassador asked, which posits that the one-year extension of Brammertz' mandate means there is no urgency in establishing the tribunal. Michel said that he had explained to his interlocutors and maintained within UN headquarters that a long lead time is necessary to stand up the tribunal; money must be allocated, personnel vetted and hired, and other administrative steps need to be taken. Equally importantly, the tribunal has to take steps now to protect witnesses. Pedersen echoed this and said Michel had been very clear to Chamber of Deputies Speaker Nabih Berri and to Hizballah that "the time has come" to do the work to establish the tribunal.

NOTHING EXPLICIT ON OPPOSITION  
POSITION, BUT SOME HINTS

16. (C) The Ambassador recalled that Michel had told the previous evening's dinner guests he had heard "nothing new" from the opposition during his visit to Beirut, and that the opposition had refused to share with Michel its reservations and objections to the tribunal. Michel replied that he had received President Lahoud's comments on the tribunal (presumably referring to the lengthy demolition of the tribunal that Lahoud had tasked his lawyers to prepare in November 2006) and that Berri had told Michel he had no substantial comments.

17. (C) Hizballah, however, had continued to refuse to share its comments with Michel, making it clear that a cabinet expansion to give the opposition a one-third-plus-one blocking and toppling minority was the price the government would have to pay to have its critique. Michel told Hizballah representative (and resigned Minister of Power and Water) Mohammad Fneish that Hizballah's position was not constructive, and that he wanted to see at least some movement on the tribunal. Michel asked Fneish to reflect and consult with his colleagues before giving a final answer.

¶18. (C) Pedersen added that he had told Fneish that the international community reads Hizballah's position on the tribunal through the speeches of Secretary-General Hassan Nasrallah, in the last of which Nasrallah appeared resolutely opposed to the tribunal. Pedersen also told Fneish that some in Lebanon and abroad now suspect Hizballah wants the tribunal to be established under Chapter VII as opposed to within Lebanon, because Hizballah's strategy in the crisis appears to leave no alternative. If, as Nasrallah threatened, enactment of the tribunal under Chapter VII brings chaos and destruction to Lebanon, Hizballah will bear at least part of the responsibility for this outcome for having forced the international community's hand. Hizballah leaders understand the urgency of Security Council members in seeking the tribunal's establishment, Pedersen added. Pedersen noted that he had followed up Michel's meeting with Fneish on 4/19 with a meeting himself with his "usual Hizballah contact" (i.e., Wafiq Safa') on 4/20.

¶19. (C) Michel told us he did not ask Fneish for the opposition's position in writing, because he knew he would be refused. He did ask for the opposition's "main concerns," he said, and that request was rebuffed. Michel did make some headway when he asked Fneish about the presumed topics of concern over the tribunal, however. While Fneish would not comment about Article 1, which defines the tribunal's scope, Fneish displayed "an interesting reaction" when Michel asked about Article 3, Paragraph 2, which assigns responsibility to superiors of those who may have perpetrated crimes. Fneish "smiled and said 'This is not a real issue for us,'" Michel reported. Fneish was part of the Hizballah working group that had addressed the tribunal issue, Michel noted, so he must have spoken with authority.

¶10. (C) Pedersen added that Fneish had also pledged that Hizballah would agree to the tribunal within three days of the formation of the committee proposed by Nabih Berri to amend the tribunal statute, indicating that Hizballah deemed its secret amendments to be easily acceptable. Unfortunately, Pedersen noted, Berri had refused to form the committee without a March 14 commitment to expand the cabinet

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according to the opposition's preferred formula.

HIZBALLAH, FORCE AND THE TRIBUNAL

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¶11. (C) The Ambassador asked whether there had been any curiosity on the part of opposition leaders about the meaning of a possible resort to Chapter VII to enact the tribunal. While Michel had not addressed the issue specifically, Pedersen had briefed Hizballah leaders before Michel's arrival, and reassured them that under the tribunal's Article 41, no military intervention will be used to enforce the tribunal's decisions. Hizballah leaders greeted this news with surprise, according to Pedersen, and asked how the international community could expect the court's decisions to be respected. Pedersen responded that the tribunal's decisions would carry the force of international law.

¶12. (C) Asked by the Ambassador whether Hizballah leaders had warned Pedersen of civil war, as the Russian Ambassador had appeared to do, Pedersen responded that the terrorist group had carefully phrased its admonitions as warnings rather than threats, and had pledged never to "allow" Lebanon to fall into civil war again. Pedersen added that Hizballah's "warnings" about the tribunal had become more frequent, however. The group also said the Security Council would be effectively taking sides in Lebanon's political crisis if it established the tribunal at the behest of an "illegitimate" and "unconstitutional" government.

¶13. (C) Michel stated that he wants all those backing the Chapter VII option to carefully consider the consequences of such a path. There will certainly be consequences, he warned

without going into details, and capitals should carry out a cool-headed analysis of the risks. Pedersen agreed and said that UNIFIL could be the next target on the list of those opposing international support for Lebanon's independence. "We need to coldly analyze the risks to all of us," he concluded. The Ambassador noted that Lebanese officials, UNIFIL, and foreign envoys already face risks in Lebanon.

#### MARCH 14 LEADERS STUMBLE

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¶14. (C) Meeting with March 14 leaders, Michel discovered early in the week that the 70 majority MP's were planning to send a second petition to Secretary-General Ban Ki-moon explicitly requesting the establishment of the tribunal under Chapter VII. Michel implored them to wait, as making such a move before he left Beirut would "destroy my credibility and mission." Michel added that he would convey this message to the Prime Minister, with whom he will meet April 20 at the conclusion of his trip. The Ambassador noted he had told Telecommunications Minister and March 14 leader Marwan Hamadeh the same message and that Hamadeh had agreed the second petition should wait until after the conclusion of Michel's visit or, indeed, after the submission of Michel's report to the Security Council, which would not likely take place until after the conclusion of the Secretary-General's current travel in the first week of May. Hamadeh added that there were problems in securing the agreement of all 70 March 14 MPs to the need for explicit reference to Chapter VII and that the petition would be delayed for this reason in any case.

¶15. (C) The Ambassador said the March 14 side must have a comprehensive strategy if it decides to proceed with a request for a Chapter VII resolution to establish the tribunal. Pedersen said he had the impression March 14 leaders, in particular Saad Hariri, believed a Chapter VII resolution was already in their pocket. Michel added that the tribunal's proponents believed the French government and USG had assured them Chapter VII was a sure thing. The Ambassador responded that we have been telling March 14 almost the opposite message: that if they want a Chapter 7 resolution they would have to "do their homework" in the form of approaching third countries, preparing the ground, making specific requests, etc. The Ambassador speculated that the MPs' proposal for a second petition might have been March 14 leaders' creative response to that request. Alternatively, the petition idea could have been designed to give PM Siniora the political cover he needs to write a letter to

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Secretary-General Ban explicitly requesting Chapter VII.

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¶16. (C) Pedersen said "We've arrived at the perception that March 14 is not doing all it could" to help with Chapter VII. Michel amplified this, saying that for China the issue of sovereignty would be crucial. The March 14 side must explain all the steps it has taken to attempt to establish the tribunal, that the request for Chapter VII comes from the government of Lebanon itself, and that that government is legitimate despite the opposition's claims to the contrary. The Ambassador said that March 14 petitions up to now have been little more than a device to provoke a reaction, such as Nasrallah's confrontational Easter speech, from the opposition. Pedersen agreed that both sides were provoking the other but that there was no initiative, "and that is the cycle we must break."

¶17. (C) Michel reported on his meeting with Defense Minister and Deputy Prime Minister Elias Murr to discuss the tribunal. Murr told Michel that if he were to take a position on the tribunal as a victim, he would seek its enactment under Lebanese law. His position had evolved, however, and he realized there may be no alternative to Chapter VII. Murr

requested as much advance notice as possible to prepare for possible attacks in reaction to Security Council action on the tribunal. He told Michel he would mobilize up to 50,000 troops if a Chapter VII resolution appeared to be in the offing. The Ambassador and Pedersen called Murr's number a clear exaggeration, and Pedersen seemed equally unimpressed by Murr's assurance that he would do everything possible to protect the UN and UNIFIL. Murr believed that if the tribunal were established by the Security Council, the opposition might stage an attack in the north to divert attention and troops away from Hizballah's traditional home ground in south Lebanon.

¶18. (C) Finally, Pedersen noted that even March 14 leader Samir Geagea had publicly raised concerns that the tribunal might be used to prosecute crimes that occurred during Lebanon's Civil War, even though Article 1 of the statute would appear to preclude this. Michel added that Geagea and Walid Jumblatt had made irresponsible comments to the press that were the "worst blow" to the effort to establish the tribunal. Michel had taken Jumblatt to task about his comment that Hizballah should be tried, and Jumblatt responded with a well-known Lebanese rumor: that the car that was used to attack Marwan Hamadeh on 10/1/2004 had spent the night before the explosion in the Hizballah-controlled southern suburbs.

#### MICHEL'S RECOMMENDATIONS

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¶19. (C) Michel said he would conclude his visit to Beirut not with a recommendation for a solution but by imploring all parties to carefully reflect on the necessity to move forward on the tribunal. As for his recommendation to Secretary-General Ban, Michel said his report would be as

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factual as possible. He would not push any particular options or courses of action; "this is the only way for me to do my job." The Ambassador commented that a purely factual report -- one that reports that the March 14 side had always been clearly behind the tribunal since its statute became publicly available on November 9, 2006, while the opposition refuses even to reveal its position on the court -- should serve only to strengthen USG resolve to establish the tribunal. "Perhaps it will be that way," Michel acknowledged.

¶20. (C) Pedersen said that to maximize Security Council support for a Chapter VII resolution, no move should be made in the Council until a few days after Michel's report is presented (after Ban's return to New York). Realistically, because of Ban's travel and Michel's official travel to Spain at the end of next week, Michel will likely not be able to brief the Council before ten days or two weeks, Michel said. In the meantime, Michel urged us to spur pro-tribunal MPs to begin working on Security Council members now. Had a vote been taken before Michel's trip, he speculated, the Council would not have passed a Chapter VII resolution. It is crucial not to "ruffle the feathers" of any members that might object. All members, he concluded, must be convinced there is no Lebanese solution left.

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#### MICHEL INTRIGUED BY BERRI'S DELAYING TACTICS?

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¶21. (C) Immediately after his meeting with the Ambassador, Michel met for a second time with Nabih Berri, after which he again saw PM Siniora for a wrap-up meeting. Later, Siniora's advisor Mohamad Chatah called the Ambassador to report that he was worried by Michel's message to the PM. As Chatah was speaking on a cell phone from the Beirut airport (preparing to board a plane), he was circumspect, so we do not have many details. But Chatah's unhappiness was obvious. Berri,

apparently, had proposed in his second meeting with Michel a complicated series of consultations ostensibly aimed at creating the tribunal through a Lebanese process and that would include "a second circle" of various regional players supporting the process. "It's a very complicated scheme," Chatah commented.

¶22. (C) Briefing the PM, Michel and Pedersen were intrigued by Berri's proposal, Chatah said, as it held out the promise that the Lebanese could come together around the tribunal. While everyone's first choice is a successful Lebanese process to create the tribunal. Chatah noted, he felt certain that Berri was simply throwing out delaying tactics that the UN was in danger of accepting as sincere. Chatah said that Michel's talk of moving ahead now and the rumors of Chapter VII approval of the tribunal had apparently motivated Berri and his pro-Syrian allies to come up with a new strategy by constructing consultative procedures that would be difficult politically for the GOL and UN to reject. These procedures, however, would ultimately prove to be intended to stop, not facilitate, the tribunal's establishment. Chatah hoped that Michel was clever enough to see through Berri's game. (Comment: we will talk with Pedersen for a more complete account as soon as possible. If Berri has indeed proposed some kind of internal consultations on the tribunal, it will be that much more difficult to convince Siniora to proceed with a letter requesting Chapter VII action. And we can almost see the satisfied expression on Russian Ambassador Boukin's face. End comment.) FELTMAN